

REMARKS

The above Amendments and these Remarks are in reply to the non-final Office Action mailed April 5, 2005. An appropriate Petition for Extension of Time to Respond is submitted herewith, together with the appropriate fee.

Claims 60-66, 97, 106 and 108-118 were pending in the Application prior to the outstanding Office Action. In the Office Action, the Examiner rejected claims 60-66, 97, 106, 108-110 and 112-118, and objected to claims 67 and 111. Applicants respectfully request reconsideration of the rejections.

I. ELECTIONS/RESTRICTIONS

The Examiner notes that Applicants filed an election on January 31, 2003. Applicants clarify for the record that this is a minor typographical error, and that the election was filed on January 31, 2005.

II. REJECTION UNDER 35 U.S.C. §102(B) OVER *VOYDEVILLE GILLES* (FR. PAT. NO. FR2724554)

Claims 60, 61, 109, 112 and 114-116

The Examiner rejected claims 60, 61, 109, 112 and 114-116 under 35 U.S.C. §102(b) over *Voydeville*. Applicants respectfully traverse the rejection.

In the Office Action, the Examiner writes that *Voydeville* discloses an implant comprising “a ‘shaft’ 2; a compressible cylindrical spacer 1 rotatably mounted on the ‘shaft’ 2” (Emphasis Added). See OA, page 2. However, Applicants assert that *Voydeville* fails to disclose a “a spacer that is rotatably mounted on [a] shaft” as recited in claims 60 and 114-116. Referring to FIG. 3 and the accompanying text on pages 2 and 3 of the enclosed English translation, *Voydeville* discloses a “block (1) is shaped for the passage of artificial ligaments (2) under specific conditions...preferably, the block is pierced for the criss-cross passage of two ligaments.” See pages 2-3. The arrangement of the ligaments in the block restricts rotation of the block about the ligaments. In the preferred embodiments, the block cannot rotate relative to the ligaments within the block. While FIG. 3 shows the criss-cross arrangement in phantom cross-sectioning, the figure inadequately communicates the overlapping arrangement described in the text. Such arrangement is shown more clearly in FIGs. 4, 6, 7 and 9 of U.S. Pat. 5,609,634 to *Voydeville*. Referring to FIG. 9 of *Voydeville* ‘634 the cross-section of the criss-crossed ligament resembles that of FIG. 3 of *Voydeville*. It can be seen in FIGs. 4, 6 and 7 that the ligament actually enters different piercings in each pass so that rotation of the block is restricted by the twisting of the ligaments. Thus the block is not “rotatably mounted” over the ligament. Applicants assert that the same structure is disclosed and taught in *Voydeville*, as evidenced by the cited text from pages 2 and 3 of the English translation.

Further, it's asserted that if the ligaments were not threaded through the block in the preferred fashion, or in a fashion as taught in the specification, so that the ligaments do pass through an *axially common passage*, it is asserted that the arrangement of the ligaments in tension across a diameter of a common passage creates restrictive friction of the spacer at least at the portion of the ends of the piercings of the block so that the spacer cannot effectively rotate. If enough force is applied the block can be rotated relative to the adjacent spinous processes, but the ligaments would twist with the block. Thus the block is not "rotatably mounted" over the ligament.

Voydeville fails to disclose a "a spacer that is rotatably mounted on [a] shaft" as recited in claims 60 and 114-116. Since *Voydeville* fails to disclose all of the features of claims 60 and 114-116, *Voydeville* cannot anticipate claims 60 and 114-116 under 35 U.S.C. § 102(b). Dependent claims have at least the features of the independent claims from which they depend; therefore, *Voydeville* cannot anticipate claims 61, 109 and 112 (which ultimately depend from claim 60) under 35 U.S.C. § 102(b). Accordingly, Applicant respectfully requests withdrawal of the rejection.

III. REJECTION UNDER 35 U.S.C. §103(A) OVER *VOYDEVILLE*

Claims 62-66, 97, 106, 108, 110, 113, 117 and 118

The Examiner rejected claims 62-66, 97, 106, 108, 110, 113, 117 and 118 under 35 U.S.C. §103(a) as being unpatentable over *Voydeville*. Applicants respectfully traverse the rejection.

In the Office Action, the Examiner writes that "as previously discussed, *Voydeville* shows a device that basically the same as that recited in the above listed claims." See OA, page 3. For the reasons given above in Section I, Applicants assert that *Voydeville* does not teach or suggest all of the features of claims 60, 61, 109, 112 and 114-118.

Voydeville fails to teach or suggest a "a spacer that is rotatably mounted on [a] shaft" as recited in claims 60 and 114-116. Since *Voydeville* fails to teach or suggest all of the features of claims 60 and 114-118, *Voydeville* cannot render claims 60 and 114-118 obvious under 35 U.S.C. § 103(a). Dependent claims have at least the features of the independent claims from which they depend; therefore, *Voydeville* cannot render claims 62-66, 97, 106, 108, 110 and 113 (which ultimately depend from claim 60) obvious under 35 U.S.C. § 103(a). Accordingly, Applicant respectfully requests withdrawal of the rejection.

IV. ALLOWABLE SUBJECT MATTER

Applicants appreciate the indication that claims 67 and 111 are objected to as being dependent upon a rejected base claim, but would be allowable if amended to include the limitations of the base claim and any intervening claims. However, given the argument above, Applicants respectfully assert that claims 67 and 111 depend from allowable claims. Applicants respectfully request withdrawal of the objection.

V. CONCLUSION

In light of the above, it is respectfully submitted that all of the claims now pending in the subject patent application should be allowable, and a Notice of Allowance is requested. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

The Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

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